



INTERIOR BOARD OF INDIAN APPEALS

Gary G. Metoxen v. Acting Assistant Secretary - Indian Affairs

12 IBIA 3 (09/23/1983)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

GARY G. METOXEN	:	Order Dismissing Appeal
	:	
v.	:	
	:	Docket No. IBIA 83-49-A
ACTING ASSISTANT SECRETARY--	:	
INDIAN AFFAIRS	:	September 23, 1983

On September 1, 1983, the Board issued an Order Acknowledging Receipt of Notice of Appeal and Requesting Response in the above-captioned matter. Specifically, the Board's order sought to apprise the Assistant Secretary's Office of the filing of an appeal with the Board from the decision of the Acting Assistant Secretary rendered June 10, 1983, and of the Assistant Secretary's discretionary authority under 43 CFR 4.330 to permit review of the appeal by the Board. ^{1/} The Board requested a response as to whether the Assistant Secretary desired review of the above appeal by September 23, 1983.

The time proposed for a specific referral of this matter to the Board under 43 CFR 4.330 has now passed and no referral has been received.

^{1/} It is discretionary with the Assistant Secretary whether further review of his decisions (or decisions of the Acting Assistant Secretary) by the Board be allowed because such decisions are Secretarial determinations entitled to finality. This has always been recognized by the Board. Ute Mountain Ute Tribe v. Acting Assistant Secretary, 11 IBIA 168 (1983). Notwithstanding otherwise dispositive actions by the Assistant Secretary, the Board has been requested to review such decisions under 43 CFR 4.330 from time to time. See, e.g., Pueblo of Laguna v. Assistant Secretary, Docket No. IBIA 83-23-A.

Accordingly, appellant's notice of appeal is hereby dismissed. 2/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior under 43 CFR 4.1, appellant's July 10, 1983, appeal of the decision of the Acting Assistant Secretary--Indian Affairs dated June 10, 1983, is dismissed.

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Franklin D. Arness
Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge

2/ As noted in the Board's September 1 order, this appeal was purportedly dismissed by action of the Deputy Director, Office of Indian Services, BIA, which action the Board declared improper. See 25 CFR 2.13. Under Departmental regulations, it is for the Board of Indian Appeals to docket any appeal submitted to the Board and to take appropriate action on such appeals. The docketing of appeals is an administrative requirement and a record-keeping necessity. Docketing in no way implies a Board determination that it has authority to adjudicate a case. In this appeal, the Board's docketing order affirmatively states that it could not adjudicate the appeal in the absence of specific permission to do so by the Assistant Secretary.

On reexamination of the September 1 order, the Board wishes to clarify one sentence. At p. 3, it was observed that the Acting Assistant Secretary's decision "does not clearly reflect whether the possibility that further review might be sought from the Board was considered." What was meant to be conveyed in the September 1 order, and which the Board trusts appears clear from the order as a whole, was that following the Acting Assistant Secretary's decision and the dismissal of an appeal therefrom by a subordinate BIA official, the Assistant Secretary's Office was deprived of the opportunity to consider whether further review by that office or IBIA might be appropriate.